

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 579 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NATVARLAL A PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners
PUBLIC PROSECUTOR for Respondent No. 1
MR VH BRAHMBHATT for Respondent No. 2
SERVED for Respondent No. 3
MR UR GANDHI for Respondent No. 4
UNSERVED for Respondent No. 5

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 06/08/97

CAV ORAL JUDGEMENT

Before the City Sessions Judge of city of Ahmedabad, as a Spl. Judge under the Prevention of Corruption Act, 1988, a complain came to be lodged by respondent no.2 on 8.4.1997. Finally, the matter came to

be dealt with by the Ld. City Sessions Judge Mr. P.B.Raval on 25.4.1997 and was pleased to pass an order that Dy. Director, Anti Corruption Bureau to investigate the matter and submit his report within two months. With a prayer that the complaint be quashed and aforesaid order be set aside, of the several accused, accused nos. 1, 2 & 4 have filed the present petition. A submission is that in the complaint though running into 10 typed pages, it suppresses vital information as to previous litigations before the Board of Nominees going right up to the Co.Op. Tribunal and also the pendency of Civil Suit No. 4710/87 in the City Court, Ahmedabad itself.

2.. As could be expected in the matter like this, a submission made on behalf of the petitioners is that the petitioners along with several other petitioners had decided to join Nikita Park Naroda Co.Op.Housing Society Ltd. (hereinafter referred to as the Society) and for that purpose had entered into an agreement with the developers and builders carrying on business in the name and style of M/s Madhu Builders. There was an agreement between the said society and respondent no.2. The agreement with M/s Madhu Builders is produced at Annexure : C and an agreement entered into by respondent no.2 with the society is produced at Annexure : D. Annexure: A is the form of membership and Annexure : B is the declaration said to have been respectively filled in and executed by respondent no.2.

3.. Respondent no.2 has filed affidavit-in-reply and has produced along with it photostat of mortgage deed said to have been executed in favour of respondent no.5 Bank - originally accused no.6 Bank which is a Housing Finance Corporation of which original accused no.5 at the relevant time was the Chairman. Along with the reply, order passed by the competent authority under Urban Land Ceiling Act, 1976 has been produced sanctioning the scheme.

4. The thrust of the complaint and reply is to the effect that when scheme under the provisions of the Urban Land Ceiling Act, 1976 was sanctioned for economically weaker section of the society and as a part of the scheme, price of each individual unit typewise was fixed, any amount sought to be recovered beyond that cannot be countenanced. Once the members - intending purchaser of the tenement as per the scheme has paid entire price thereof and thus when society is able to recover the value of land as well as construction, obviously, it would not be in need of additional funds and, therefore, said mortgage transactions as per deeds

171 to 174 and 145 to 171 were totally un-called for. Transactions having been entered into with the said accused no.6 through accused no.5 by remaining accused nos. 1 to 4, it would clearly be a case of corruption as understood under the provisions of the said Act.

5.. The aforesaid submissions, therefore, assumes that there was no need for additional finance. It also assumes that all the purchasers had paid full price. So far as latter assumption is concerned, it may be justified because unless full payment was made, there was no question of handing over possession of a tenement. Yet, as could be seen from the material produced by the petitioner, there has been proceedings taken for recovery of dues towards price of the tenement and award passed by the member of the Board of Nominees in Lavad Suit. Copy of the award passed in one such Lavad Suit No. 658/98 is produced at Annex.G page 86 to 89. The defendant is Smt.Shantaben R. Suthar who is also one of the plaintiff of Suit No. 4710/87 filed by 208 plaintiffs. Her name is at Sr. No.185 page 58. Later on, this suit will also be referred to at an appropriate place. The aforesaid assumption as to the payment of price also, therefore, is not made out.

6.. However, the aforesaid agreements clearly contain clauses to the effect that additional finance, if required for which loan is made available and members of the society who avail of the loan, will have to abide by the terms and conditions as to the payment. For this, see Clause Nos. 14, 15, 16 at page 31 and more particularly Clause No.6 at page 29 will be relevant where the price is fixed at Rs. 35,255/- and that is what is agreed to be paid.

7.. The pending civil suit namely Civil Suit No. 4710/87, copy of the plaint being at Annex.F page 37 onwards, when is referred to from the prayer clause, it is found that declaration as to the price of the house is sought. Anything in excess of the price fixed by the scheme and recovered by the defendants of that suit is to be declared illegal and is to be declared illegal and is to be ordered to be refunded after the accounting is done.

8.. The suit which has been filed in the year 1987 where the present complainant - respondent no.2 is one of the parties, clearly thus indicates that it is a matter of accounting. If at the end of accounting procedure, it is found that some amount in excess of the price fixed under the scheme was payable, to that extent, no

declaration will be granted, no consequential relief of refund would either be given. In this back ground, obviously, there is no question of there being any criminal offence either under the Indian Penal Code or under the provisions of the Prevention of Corruption Act, 1988. This fact is not at all disclosed in the complaint.

9.. In his otherwise elaborate reply and respondent no.2 has not denied the pendency of the suit. When pendency of the suit was pointed out in the course of hearing in this matter, the Ld. counsel appearing for respondent no.2 had taken a time to ascertain from respondent no.2 the aforesaid facts. This happened on 9.7.1997. On 10.7.1997, he came back and disclosed startling facts, of course under the instructions, that respondent no.2 has not filed any suit though some of the members of the society had obtained his signature on a petition or a representation like document and he had signed the same because others had signed without knowing that it is a suit. This may or may not be the position, the pendency of the suit cannot be denied and the fact that name of respondent no.2 appears as one of the plaintiffs at Sr. No.171 is also undeniable.

10.. Thus, in ultimate analysis, what turns out to be a dispute of a civil nature calling for accounts which necessarily would involve several disputed questions of facts of a civil nature, it is quite obvious that the offence as alleged is not at all made out. In fairness of the Ld. Trial Judge, it must be said that these facts are not at all adverted to in the complaint.

11.. Coming back to the complaint, if one reads the same, except for general allegations as to funds having been obtained and members having been defrauded, there are no specifics to be found in the complaint, much less, therefore, there could be any details as to the amount actually having been brought-in and embazzled. The Ld. Judge ought to have, therefore, sought clarification or atleast entered into the some sort of inquiry before straightway passing the order of investigation by the Anti-Corruption Bureau.

12.. More important aspect that ought to have been born in mind by the Ld. Trial Judge was a question whether the office-bearer of Co.Op.Society would fall into the category of a " public servant " or not. He being the member of the society, it is difficult to understand how first four accused, three of which are before this Court by way of this petition, would ever fall

in to the category of a " public servant " as understood under the provisions of the said Act. Definition Clause 2(p) of the said Act, if gone through, none of the provisions will cover either the members or the office-bearers of a Co.Op. Society.

13.. Arguably perhaps, Financial Corporation like the original accused no.6 can be said to be covered, but that is not the question before me, and I will not enter into it. The petitioners have nothing to do either with no.5 or no.6 except that they having obtained loan from respondent no.6.

14.. I have, therefore, no hesitation in holding that the petition falls into a category of those cases where a complaint does not disclose offence. On the contrary, it substantially discloses dispute between the members and office-bearers of the society. The suit is already pending between them. The society is already under the orders of winding up and Administrator/ Liquidator is appointed.

15.. Ld. Counsel Mr. Brahmbhatt has cited 1997(1) Crimes 4 (SC) P.4 where referring to the judgment of the Division Bench, His Lordship Justice Majmudar, after referring to Bhajanlal's case reported in 1992 Supp.(1) SCC 335, set out 7 categories in which the Court may interfere in exercise of its powers under sec. 482 of Cr.P.Code. Obviously, this decision was cited by Ld. Counsel Mr. Brahmbhatt to make out his submission that circumstances of the case do not call for interference at the hands of this Court and investigation should be allowed to continue. However, the very first category that the offence is not made out will call for exercise of the powers by this court. In view of suppression of facts, category no.7 of malafide would also be said to be made out. Category no.3 where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose commission of any offence, would also be attracted. The decision, on the contrary, in my opinion would go against respondent no.2.

16.. AIR 1984 SC 684 was cited with a view to support the submission on behalf of respondent no.2 that while interpreting statute like Prevention of Corruption Act,1988, the object and purpose underlying the Act should be advanced. In this A.R.Antulay's case, looking to the facts and circumstances of the case, rule has been

laid down and even otherwise it is well-known rule of interpretation. This decision was pressed into service when provisions as to " public servant " were being discussed at Bar. In the instant case, this decision is not required to be considered.

17.. The third case is that of Ld. Single Judge of this Court reported in 1993 Cr.L.R.(Guj.) 51 where the process issued against the petitioner on submission of a police report was under challenge. Obviously, this could not be done.

18.. Thus, taking an overall view of the matter and after considering the decisions cited, I have no hesitation in holding that the petition is required to be allowed and is accordingly allowed. The complaint is quashed and impugned order is also quashed and set aside. Rule is made absolute.

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